

**\*\* Transmit Conf. Report \*\***

P.1

Mar 4 2005 14:36

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Patent Application of Atty Dkt. 1331-337  
C# M#  
Reid W. von Borstel TC/A.U. 1632  
Serial No. 09/838,135 Examiner: Ganapathy Krishnan  
Filed: April 20, 2001 Date: March 4, 2005  
Title: COMPOSITIONS AND METHODS FOR TREATMENT OF MITOCHONDRIAL DISEASES

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

**REQUEST FOR SUSPENSION OF ACTION**

This is a response/amendment/letter in the above-identified application and includes an attachment which is hereby incorporated by reference and the signature below serves as the signature to the attachment in the absence of any other signature thereon.

☐ Correspondence Address Indication Form Attached.

Fees are attached as calculated below:

Total effective claims after amendment 0 minus highest number  
previously paid for 20 (at least 20) = 0 x \$50.00 \$0.00 (1202)/\$0.00 (2202) \$  
Independent claims after amendment 0 minus highest number  
previously paid for 3 (at least 3) = 0 x \$200.00 \$0.00 (1201)/\$0.00 (2201) \$

If proper multiple dependent claims now added for (first time, (ignore improper); add  
\$380.00 (1051)/\$180.00 (2051) \$

Petition is hereby made to extend the current due date so as to cover the filing date of this  
paper and attachment(s)  
One Month Extension \$120.00 (1251)/\$60.00 (2251)  
Two Month Extensions \$450.00 (1252)/\$225.00 (2252)  
Three Month Extensions \$1020.00 (1253)/\$510.00 (2253)  
Four Month Extensions \$1590.00 (1254)/\$795.00 (2254) \$  
Terminal disclaimer enclosed, add \$180.00 (1814)/ \$85.00 (2814) \$

☐ Applicant claims "small entity" status. ☐ Statement filed herewith

Rule 58 Information Disclosure Statement Filing Fee \$180.00 (1808) \$

Assignment Recording Fee \$40.00 (8021) \$

Other: Request for Suspension of Action \$

**TOTAL FEE ENCLOSED \$ 0.00**

The Commissioner is hereby authorized to charge the fee for the present Request to our Account No. 14-1140.

1100 North Glebe Road, 8<sup>th</sup> Floor  
Arlington, Virginia 22201-4714  
Telephone: (703) 816-4000  
Facsimile: (703) 816-4100  
LCM:llm

NIXON & VANDERHYE P.C.  
By Atty: Leonard C. Mitchard, Reg. No. 28,009

Signature: 

932236

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of

Atty Dkt. 1331-337

C# M#

Reid W. von Borstel

TC/A.U.

1632

Serial No. 09/838,136

Examiner: Ganapathy Krishnan

Filed: April 20, 2001

Date: March 4, 2005

Title: COMPOSITIONS AND METHODS FOR TREATMENT OF MITOCHONDRIAL DISEASES

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

**REQUEST FOR SUSPENSION OF ACTION**

This is a response/amendment/letter in the above-identified application and includes an attachment which is hereby incorporated by reference and the signature below serves as the signature to the attachment in the absence of any other signature thereon.

☐ **Correspondence Address Indication Form Attached.****Fees are attached as calculated below:**

Total effective claims after amendment 0 minus highest number  
previously paid for 20 (at least 20) = 0 x \$50.00 \$0.00 (1202)/\$0.00 (2202) \$

Independent claims after amendment 0 minus highest number  
previously paid for 3 (at least 3) = 0 x \$200.00 \$0.00 (1201)/\$0.00 (2201) \$

If proper multiple dependent claims now added for first time, (ignore improper); add

\$360.00 (1051)/\$180.00 (2051) \$

Petition is hereby made to extend the current due date so as to cover the filing date of this  
paper and attachment(s)

One Month Extension \$120.00 (1251)/\$60.00 (2251)

Two Month Extensions \$450.00 (1252)/\$225.00 (2252)

Three Month Extensions \$1020.00 (1253)/\$510.00 (2253)

Four Month Extensions \$1590.00 (1254)/\$795.00 (2254) \$

Terminal disclaimer enclosed, add

\$130.00 (1814)/\$65.00 (2814) \$

☐ Applicant claims "small entity" status. ☐ Statement filed herewith

Rule 56 Information Disclosure Statement Filing Fee

\$180.00 (1806) \$

Assignment Recording Fee

\$40.00 (8021) \$

Other: Request for Suspension of Action

\$

**TOTAL FEE ENCLOSED \$ 0.00**

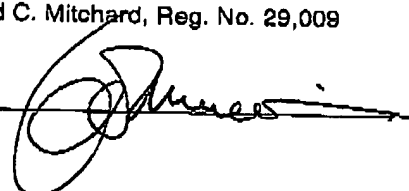
The Commissioner is hereby authorized to charge the fee for the present Request to our Account No. 14-1140.

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Telephone: (703) 816-4000  
Facsimile: (703) 816-4100  
LCM:lfm

NIXON & VANDERHYE P.C.

By Atty: Leonard C. Mitchard, Reg. No. 29,009

Signature: \_\_\_\_\_



**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Patent Application of

Reid W. von Borstel

Atty. Ref.: 1331-337; Confirmation No. 2922

Appl. No. 09/838,136

TC/A.U. 1632

Filed: April 20, 2001

Examiner: Ganapathy Krishnan

For: COMPOSITIONS AND METHODS FOR TREATMENT OF MITOCHONDRIAL  
DISEASES

\* \* \* \* \*

March 4, 2004

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

**REQUEST FOR SUSPENSION OF ACTION BY THE OFFICE**

Pursuant to 37 CFR 1.103(a), Applicants hereby request that the Office grant a suspension of action in this case for a period of six (6) months from the date of the present Request, expiring on September 4, 2005. The required good and sufficient cause for suspension of action is discussed below.

The undersigned has been advised by the Examiner by telephone that the present application is in condition for allowance. As of today's date, however, no paper has issued indicating that the application has been allowed. Therefore, no action is outstanding from the Office requiring a reply by the applicants (37 CFR 1.103(a)).

Inventorship of the invention as claimed in the present application is currently under dispute as between the presently named inventor Reid Von Borstel of Wellstat

Therapeutics Corporation and Robert K. Naviaux of the University of California, San Diego (UCSD). The Information Disclosure Statements filed on May 14, 2001, January 18, 2002, February 14, 2002 and May 29, 2002 have alluded to the litigation proceedings between these two parties. The matter is now destined to be arbitrated before an arbitrator. No firm date has been set for initiation of these proceedings, although they are expected to begin later in 2005, once the parties have settled on an arbitrator.

The good and sufficient cause for suspension of action is based on the fact that one possible outcome of the forthcoming arbitration is a change of inventorship and therefore ownership as well. A change of inventorship and/or ownership could raise new issues of patentability, for example potential obviousness-type double patenting with one or more patent applications filed by UCSD. Moreover, in the event that a change in inventorship or ownership is indicated, it would be more expeditious for the parties to prepare and file any necessary change of inventorship and assignment documentation while the case is pending and prior to allowance, rather than after allowance or after grant. For the above reasons, it is believed that good and sufficient cause is present for suspension of action in this case.

The present Request has been transmitted to the USPTO by facsimile transmission (571-273-8300) on March 4, 2005. At the suggestion of the Examiner's supervisor (James O. Wilson), a copy of the present paper (together with a copy of the facsimile confirmation page evidencing transmission today to 571-273-8300) is also being forwarded by facsimile transmission to the Examiner (571-273-0654).

Reid W. von Borstel  
Appl. No. 09/838,136  
March 4, 2005

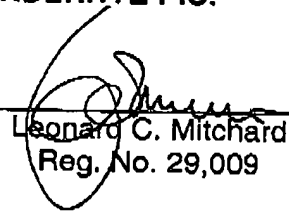
The Commissioner is authorized to charge the fee for this Request to our deposit account No. 14-1140.

Favorable action on this Request is awaited.

Respectfully submitted,

**NIXON & VANDERHYE P.C.**

By: \_\_\_\_\_

  
Leonard C. Mitchard  
Reg. No. 29,009

LCM:lfm  
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